**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CRIMINAL APPEAL NO. 649/1995

RAMOTAR & OTHERS
v
STATE OF RAJASTAN

Date of Judgment: 15th FEBRUARY, 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. R.K. Mathur with
Mr. K.L. Meena for the appellants.
Mr. S.N. Gupta, P.P.

By Court:

The appellants are challenging the judgment dated 28.11.95 passed by the Addl. Sessions Judge No.1, Alwar whereby the learned Judge has convicted the appellants Ramotar and Hari Kishan for offences under Section 366 read with Section 511 of Indian Penal Code (henceforth to be referred to as 'the IPC', for short) and sentenced them to six months of R.I. and imposed a fine of Rs. 200/- and to further undergo one month of R.I. in default thereof. Since the appellant Hari kishan has expired during the pendency of this appeal, his legal heirs have been substituted in his place. The case against Hari Kishan would have abated upon his death. But the legal representatives have been substituted, for in case he were acquitted, then they would be entitled to claim pension

that he would have received from the State Government.

Briefly, the facts of the case are that on 13.12.93 at 6.00 a.m., one Mr. Tekchand Saini lodged a report with regard to an incident that had occurred on 12.12.93 at 7.30 p.m. According to the said report when he was watering in his farm in the evening, his brother Nanag Ram, his nephew Ram Kishore and Mahendra were with him at the farm. At that time, a motorcycle stopped in fromt of his house. Two men were riding on the motorcycle. Both the men got off the motorcycle and caught hold of his daughter Krishna and tried to forcibly kidnap the child. His wife, Dhapu Devi and his daughter raised hue and cry. Hearing their shouts, the complainant and his other relatives, who working with him in the farm, ran towards their house. Both the men seeing the persons running towards them, fled from the scene. He identified one person as Ramotar, who is grand son-in-law of his uncle and the name of the second person was told to him as being Hari Kishan. Both the persons were caught and produced before the police by the people. On the basis of this written report (Ex. P.1) a formal F.I.R. (Ex. P.3) was chalked out for offences under Section 363, 360, 511 of IPC. Subsequently, the appellants were arrested and charge-sheet was submitted against them.

In order to support its case, the prosecution examined

seven witnesses and submitted certain documents. In their statement under Section 313 Cr.P.C., the appellants denied the allegations. In order to defend themselves, the appellants examined three witnesses. After considering the oral and documentary evidence, the learned Judge has convicted and sentenced the appellants as aforementioned. Hence this appeal before this Court.

Mr. R.K. Mathur, the learned counsel for the appellants, has strenuously argued that the entire story has been fabricated to falsely implicate the appellants. Since the prosecution claims that both the persons were caught by the people and handed over to the police immediately after the incident, there is no explanation for the inordinate delay of 12 hours in lodging of the FIR. Moreover, both the appellants are strangers to each other. Thus, there is no reason why two strangers would ride on a motorcycle in order to kidnap the complainant's daughter. Furthermore, even if the prosecution story is taken to be true, the learned Judge has not given any special reason for denying the benefit of probation to the appellants. Since this is the first offence committed by the appellants and since offence is punishable only with 10 years of imprisonment, there is no cogent reason for not granting the benefit of probation under the Probation of Offenders Act, 1958 (henceforth to be referred to as 'the Act', for short).

On the other hand, the learned P.P., Mr. S.N. Gupta, has argued that the appellants were caught at the scene of the crime, they were handed over to the police by the complainant and his relatives, there is consistent testimony of Krishna and Dhapu. Therefore, the prosecution has firmly established its case beyond a reasonable doubt.

We have heard the learned counsels and have perused the record and the impugned judgment.

The testimony of P.W.3 Smt. Krishna and P.W. 5 Smt. Dhapu is sufficient to prove the offence of attempt to kidnap Krishna. According to Krishna, she was at her home and was standing near the well of her house. At that time, her mother was cleaning the utensils nearby. Around 7.30 in the evening two persons came on the motorcycle and tried to drag her to the motorcycle. She protested and shouted for help, whereupon her father and other relatives rushed to her rescue. When these two persons saw the relatives running towards the house, they tried to run away. But they were caught by their father and uncle and cousin brothers and were handed over to the police. Her testimony has further been corroborated by P.W. 4 Tekchand and P.W. 5 Smt. Dhapu. Hence the prosecution has proved its case beyond a reasonable doubt.

The only question that remains is for grant of probation under Section 4 of the Act. The learned Judge has denied them the benefit of probation on the ground that offence is grave in nature. However, this cannot be termed as special reason for denying the benefit of probation to the appellants. The Legislature in its wisdom has already excluded which it considered "grave". It has already been carved out that category of cases and has denied the benefit of probation to them. The offence under Section 366 read with Section 511 IPC does not fall within that category. The fact remains that this was the first and only crime committed by the appellants. The fact remains that only an attempt to kidnap the child was made and the offence of kidnapping could not be accomplished. In the case of Khetia & Anr. Vs. State (1988 (1) RLR, 54) in a similarly situated case this Court had granted the benefit of probation to the appellants. The fact also remains that the accused appellants were convicted in 1995 i.e. 12 years ago and during this period they have not committed any other offence. Hence, while confirming the conviction of the appellants, this Court grants them the benefit of probation under Section 4 the Act and directs Ramotar for maintaining peace and tranquility for the period of one year. Since Hari Kishan has already expired, but as his legal representatives are on record, it is directed that the benefit of Section 12 of the Act shall be granted to them and the conviction shall not be read against Hari Kishan for the

purpose of his service. With these observations, the appeal is partly allowed.

(R.S. CHAUHAN) J.

MRG.